

department concerned, of any officer whose classification as a 1-A-O conscientious objector results in substandard performance of duty or other cause for elimination.

§ 75.6 Procedure.

(a) A member of the Armed Forces who seeks either separation or assignment to noncombatant duties by reason of conscientious objection will submit an application therefor. The applicant will indicate whether he is seeking a discharge or assignment to non-combatant duties and will include the following terms:

(1) The personal information required by § 75.9.

(2) Any other items which the applicant desires to submit in support of his case.

(b) Prior to processing the application of the individual, he will be (1) advised of the specific provisions of section 3103 of title 38, United States Code¹ regarding the possible effects of discharge as a conscientious objector who refuses to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authority, and (2) required to execute the statement in § 75.10.

(c) The applicant shall be personally interviewed by a chaplain who shall submit a written opinion as to the nature and basis of the applicant's claim, and as to the applicant's sincerity and depth of conviction. The chaplain's report shall include the reasons for his conclusions. In addition, the applicant will be interviewed by a psychiatrist (or by a medical officer if a psychiatrist is not reasonably available) who shall submit a written report of psy-

chiatric evaluation indicating the presence or absence of any psychiatric disorder which would warrant treatment or disposition through medical channels, or such character or personality disorder as to warrant recommendation for appropriate administrative action. This opinion and report will become part of the case file. If the applicant refuses to participate or is uncooperative or unresponsive in the course of the interview, this fact will be included in the statement and report filed by the chaplain and psychiatrist or medical officer.

(d) Commanders at levels directed by the Service Headquarters will appoint an officer in the grade of O-3 or higher to investigate the applicant's claim. The officer so appointed will not be an individual in the chain of command of the applicant. If the applicant is a commissioned officer, the investigating officer must be senior in both temporary and permanent grades to the applicant.

(1) Upon appointment, the investigating officer will review the applicable service regulations which implement this part. During the course of his investigation, the investigating officer will obtain all necessary legal advice from the local Staff Judge Advocate or legal officer.

(2) The investigating officer will conduct a hearing on the application. The purpose of the hearing is: To afford the applicant an opportunity to present evidence he desires in support of his application; to enable the investigating officer to ascertain and assemble all relevant facts; to create a comprehensive record; and to facilitate an informed recommendation by the investigating officer and an informed decision on the merits by higher authority. In this regard, any failure or refusal of the applicant to submit to questioning under oath or affirmation before the investigating officer may be considered by the officer making his recommendation and evaluation of the applicant's claim. If the applicant fails to appear at the hearing without good cause, the investigating officer may proceed in his absence and the applicant will be deemed to have waived his appearance.

(i) If the applicant desires, he shall be entitled to be represented by counsel,

¹38 U.S.C. 3103 provides, in pertinent part, that the discharge of any person on the grounds that he was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authority, shall bar all rights (except government insurance) of such persons under law administered by the Veterans' Administration based upon the period of service from which discharged or dismissed. The only exception is in cases in which it is established, to the satisfaction of the Administrator, that the member was insane.

at his own expense, who shall be permitted to be present at the hearings, assist the applicant in the presentation of his case, and examine all items in the file.

(ii) The hearing will be informal in character and will not be governed by the rules of evidence employed by courts-martial except that all oral testimony presented shall be under oath or affirmation. Any relevant evidence may be received. Statements obtained from persons not present at the hearing need not be made under oath or affirmation. The hearing is not an adversary proceeding.

(iii) The applicant may submit any additional evidence that he desires (including sworn or unsworn statements) and present any witnesses in his own behalf, but he shall be responsible for securing their attendance. The installation or local commander will render all reasonable assistance in making available military members of his command requested by the applicant as witnesses. Further, the applicant will be permitted to question any other witnesses who appear and to examine all items in the file.

(iv) A verbatim record of the hearing is not required. If the applicant desires such a record and agrees to provide it at his own expense, he may do so. If he elects to provide such a record, he shall make a copy thereof available to the investigating officer, at no expense to the Government, at the conclusion of the hearing. In the absence of a verbatim record, the investigating officer will summarize the testimony of witnesses and permit the applicant or his counsel to examine the summaries and note for the record their differences with the investigating officer's summary. Copies of statements and other documents received in evidence will be made a part of the hearing record.

(3) At the conclusion of the investigation, the investigating officer will prepare a written report which will contain the following:

(i) A statement as to whether the applicant appeared, whether he was accompanied by counsel, and, if so, the latter's identity, and whether the nature and purpose of the hearing were explained to the applicant and understood by him.

(ii) Any documents, statements and other material received during the investigation.

(iii) Summaries of the testimony of the witnesses presented (or a verbatim record of the testimony if such record was made).

(iv) A statement of the investigating officer's conclusions as to the underlying basis of the applicant's conscientious objection and the sincerity of the applicant's beliefs, including his reasons for such conclusions.

(v) Subject to § 75.5(e), the investigating officer's recommendations for disposition of the case, including his reasons therefor. The actions recommended will be limited to the following:

(a) Denial of any classification as a conscientious objector; or

(b) Classification as 1-A-O conscientious objector; or

(c) Classification as 1-O conscientious objector.

(vi) The investigating officer's report, along with the individual's application, all interviews with chaplains or doctors, evidence received as a result of the investigating officer's hearing, and any other items submitted by the applicant in support of his case will constitute the record. The investigating officer's conclusions and recommended disposition will be based on the entire record and not merely on the evidence produced at the hearings. A copy of the record will be furnished to the applicant at the time it is forwarded to the commander who appointed the investigating officer, and the applicant will be informed that he has the right to submit a rebuttal to the report within the time prescribed by the military service concerned.

(e) The record of the case will be forwarded to the headquarters of the officer who appointed the investigating officer where it shall be reviewed for completeness and legal sufficiency. If necessary, the case may be returned to the investigating office for further investigation. When the record is complete, the authority who appointed the investigating officer shall forward it with his personal recommendation for disposition, and the reasons therefor,

through the appropriate chain of command to headquarters of the military service concerned.

(f) The headquarters of the military service concerned will make a final decision based on the entire record. Any additional information other than the official service record of the applicant considered by the headquarters of the military service concerned which is adverse to the applicant, and which the applicant has not had an opportunity to comment upon or refute, will be made a part of the record and the applicant shall be given an opportunity to comment upon or refute the material before a final decision is made. The reasons for an adverse decision will be made a part of the record and will be provided to the individual.

(g) Processing of applications need not be abated by the unauthorized absence of the applicant subsequent to the initiation of the application, or by the institution of disciplinary action or administrative separation proceedings against him. However, an applicant whose request for classification as a conscientious objector has been approved will not be discharged until all disciplinary action has been resolved.

(h) To the extent practicable under the circumstances, during the period applications are being processed and until a decision is made by the headquarters of the service concerned, every effort will be made to assign applicants to duties within the command to which they are assigned which will conflict as little as possible with their asserted beliefs. However, members desiring to file application who are on orders for reassignment may be required by the military service concerned to submit applications at their next permanent duty station. During the period applications are being processed, applicants will be expected to conform to the normal requirements of military service and to perform satisfactorily such duties to which they are assigned. Applicants may be disciplined for violations of the Uniform Code of Military Justice while awaiting action on their applications.

§ 75.7 Action after decision.

(a) Applicants requesting discharge who are determined to be 1-O conscien-

tious objectors by the headquarters of the service concerned will be discharged for the convenience of the Government with entry in personnel records and discharge papers that the reason for separation is conscientious objection. The type of discharge issued will be governed by the applicant's general military record and the pertinent provisions of part 41 of this title. The Director of the Selective Service System will be promptly notified of the discharge of those who have served less than one hundred and eighty (180) days in the Armed Forces. Pending separation, the applicant will continue to be assigned duties providing the minimum practicable conflict with his professed beliefs and will be expected to conform to the normal requirements of military service and to perform satisfactorily such duties to which he is assigned. Applicants may be disciplined for violations under the Uniform Code of Military Justice while awaiting discharge.

(b) Applicants requesting assignment to noncombatant duties who are determined to be class 1-A-O conscientious objectors by the military department shall be (1) assigned to noncombatant duty as defined in § 75.3, or (2) discharged from military service or released from active duty, at the discretion of the military department. Each applicant will be required to execute the statement in § 75.11.

(c) Persons who are assigned to noncombatant duties, and persons who are assigned to normal military duties by reason of disapproval of their applications, will be expected to conform to the normal requirements of military service and to perform satisfactorily such duties to which they are assigned. Violations of the Uniform Code of Military Justice by these members will be treated as in any other situation.

§ 75.8 Claims of erroneous induction.

(a) This section applies to any individual who claims that he is a conscientious objector and was either erroneously inducted, or erroneously assigned to combatant training or duty, for any of the following reasons:

(1) Although determined to be a conscientious objector by a local board or